



## Office of the Attorney General

State of Texas

September 28, 1998

DAN MORALES

ATTORNEY GENERAL

Ms. Elizabeth Dierdorf  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR98-2322

Dear Ms Dierdorf:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118328.

The City of Fort Worth (the "city") received an open records request for records pertaining to proposed disciplinary action against the requestor's client, a city police officer. You contend the requested records are excepted from required public disclosure pursuant to section 552.103 of the Government Code, because the records also pertain to a pending EEOC complaint the requestor's client filed with the Texas Commission on Human Rights.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have provided this office with a copy of the complaint that was filed with the Texas Commission on Human Rights (the "commission") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. The filing of such a complaint constitutes evidence that the likelihood of litigation against the city is more than mere conjecture. *See* Open Records Decision No. 386 (1983). Furthermore, in this instance you have made the requisite showing that the requested information relates to the reasonably anticipated litigation. Based on your representation that the complaint is currently pending before the commission, we conclude that the city may withhold most of the requested records at this time pursuant to section 552.103.

Please note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In this regard we note that to the extent the complainant or her attorney have seen or had access to the records pertaining to the complaint, there would be no justification for now withholding such information from the requestor at this time pursuant to section 552.103. Accordingly, to the extent that such information exists, the city must release these types of documents to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William M. Walker  
Assistant Attorney General  
Open Records Division

WMW/RWP/ch

Ref.: ID# 118328

Enclosures: Submitted documents

cc: Ms. Colleen Hamon  
Attorney at Law  
2409 Wild Oaks Avenue  
Joshua, Texas 76058  
(w/o enclosures)